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Supreme Court, U.S.
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No. 63

In the Supreme Court of the United States

October Term, 1953

Arthur Flaxer & Quirk Wrecking, Inc., Petitioners

v.

United States of America

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

Ellis N. Slack,
Special Attorney,
Department of Justice,
Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 774

ALLIED PAINT & COLOR WORKS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

This case presents the same basic issue raised in *United States v. Carlo Bianchi*, No. 529, now pending before this Court on writ of certiorari granted on December 17, 1962, *i.e.*, whether a district court (or the Court of Claims) reviewing the administrative ruling of one of the contract dispute boards should grant a trial *de novo* and take testimony or whether it should confine itself to the record made before the administrative tribunal. In petitioning the Court in No. 529, the government, asserting a conflict with various court of appeals decisions, relied upon the Second Circuit's decision in the instant case. Accordingly, we do not oppose grant of the petition

herein. We point out, however, that the record in No. 529 has been printed and that briefing is in progress. The Court may therefore wish to defer action on the instant petition pending its decision on the merits in No. 529.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

FEBRUARY 1963.

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